

N.D.A.G. Letter to Schaible (May 11, 1988)

May 11, 1988

Mr. Robert R. Schaible
Deputy Secretary of State
Secretary of State's Office
State Capitol
Bismarck, ND 58505

Dear Mr. Schaible:

Thank you for your letter of April 11, 1988, concerning foreign nonprofit corporations conducting charitable solicitations within North Dakota. Your inquiry is whether such entities should obtain a certificate of authority when they conduct charitable solicitations within North Dakota.

N.D.C.C. § 10-27-01 provides that no nonprofit foreign corporation may conduct its affairs in this state until it has obtained a certificate of authority from the Secretary of State. N.D.C.C. § 50-22-02 prohibits a charitable organization from soliciting contributions in this state until it has obtained a license from the Secretary of State. There is no discussion in either statute concerning the applicability of the other statute. Furthermore, no North Dakota Supreme Court cases have been located determining whether a foreign nonprofit corporation desirous of soliciting charitable contributions in this state must comply with both statutes before such contributions may be solicited.

However, there is old case law concluding that it is unnecessary for a foreign corporation to comply with statutory conditions concerning the admission of a foreign corporation where that corporation is of a particular class or is desirous of engaging in a particular business where other statutes set up special requirements for corporations or businesses of that particular character. 36 Am. Jur.2d Foreign Corporations 194 at 184 (1968). This particular rule of law has been applied so as to allow a foreign corporation to act as the administrator of an estate (In Re McGill, 280 P. 321 (Nev. 1929)), and engage in the insurance business (St. Louis Railway v. Commercial Ins. Co., 139 U.S. 223 (1891)) without obtaining a certificate of authority.

A 1919 decision of the Michigan Supreme Court appears to be applicable to the inquiry you have raised. In Edward v. Ioor, 172 N.W. 620 (Mich. 1919), the court considered whether a foreign corporation desirous of engaging in the securities business within the state had to secure a certificate of authority to do business in the state as well as comply with applicable securities law registration requirements. The court held as follows:

Compliance with the Corporation Act permits a foreign corporation to "carry on its business," the business for which it is organized in the state; compliance with the Commission Act [security registration requirement]

permits it to sell its stock and other securities. One is not in any way dependent upon the other. One foreign corporation may desire to carry on its business in the state, but not desire to sell stock; another may desire to sell stock but not desire to carry on its business in the state. If a foreign corporation desires to carry on its business and also sell its stock in the state, it is obvious that it must comply with both acts. It is equally obvious that if it desires to do but one of these things, it is required to comply only with the provisions of the appropriate act.

Id. at 621.

The decision of the Michigan Supreme Court appears to be reasonable and sound. It is illogical and impractical to interpret the previously identified state statutes to require a corporation engaging in a particular business for which specific registration is already required to comply with a general registration requirement unrelated to the corporation's business. That is obviously the rationale utilized by the Michigan Supreme Court in the above decision and one which I believe should be applied to your inquiry.

Further support for this conclusion is found by reviewing the purposes of the statutory requirements.

The statutes providing for a certificate of authority for foreign nonprofit corporations are located at N.D.C.C. § 10-27-01. Generally, the requirement for a foreign corporation to obtain a certificate of authority before conducting business within a particular state is based upon protection and identification interests. Such legislation affords protection to those with whom such corporation does business or to whom it incurs liabilities. This legislation is also intended to subject foreign corporations to inspection so that their condition may be known, and to protect residents of the state doing business with said corporations by subjecting the corporations to the jurisdiction of the courts of this state. 36 Am. Jur.2d Foreign Corporations 202 at 190-91 (1968); 17 A. Fletcher Cyc. Corp. § 8446 at 7 (perm. ed. 1987).

The statutes regulating charitable solicitations conducted by charitable organizations are located at N.D.C.C. ch. 50-22. Charitable organizations may obtain a license to conduct charitable solicitations in this state after the Secretary of State investigates their financial responsibility, experience, character, and general fitness. The Secretary of State is able to grant the license only if he believe that the solicitations are for a worthy charitable purpose and the applicant will conduct the solicitations in accordance with applicable state law. N.D.C.C. § 50-22-02.

Clearly, the protection and identification purposes of both sets of statutes are consistent, if not redundant, with one another. Although the charitable solicitation laws do not require the identification of a registered agent for service of process purposes, the general purposes and interests furthered by both sets of statutory schemes are very similar.

Applying the decision of the Michigan Supreme Court in Edward v. loor, and in light of the

similar interests furthered by both the certificate of authority requirements and the charitable solicitation registration requirements, I conclude that a nonprofit foreign corporation obtaining a charitable solicitation license pursuant to N.D.C.C. ch. 50-22 is not required to obtain a certificate of authority pursuant to N.D.C.C. § 10-27-01 so long as the foreign corporation conducts only charitable solicitations within the state of North Dakota.

Sincerely,

Nicholas J. Spaeth

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